



ADVANCE DIRECTIVES

Advance directives are written instructions stating your wishes regarding your medical treatment if you become incapacitated/incompetent and physically/mentally unable to communicate. We all have the right to make our own decisions about medical issues, as long as we are competent to do so. Competence or capacity is generally the ability to understand, make, and communicate decisions about specific transactions. Everyone is presumed competent until proven otherwise.

Doctors look to advance directives or substitute decision makers when their patient is not competent or capable of providing medical direction.

Why should I prepare advance directives?

- to avoid needless suffering;
- to preserve personal dignity;
- to control your own fate;
- to help or protect your family; and
- to ensure the right person, not the wrong person, is chosen to make decisions for you.

Laws may differ from state to state. If you spend a great deal of time in more than one state, you may want to consider having an advance directive that meets the requirements of the law for each state. However, it is important to make sure that all documents you create are consistent.

The following types of medical directives are recognized in Colorado:

- Living Will - applies in cases of terminal illness or persistent vegetative state
- Medical Durable Power of Attorney - allows your named agent to make medical decisions for you in the event you become unable to make decisions for yourself
- Other directives that you can ask your physician about: Cardiopulmonary Resuscitation Directive, Do Not Resuscitate Order, Medical Orders for Scope of Treatment

LIVING WILL

CRS §§§15-18-101, 15-18-104, & 15-18-107

A Living Will is also known as an “Advance Directive for Medical/Surgical Treatment.” It is a document that expresses your preference as to medical treatment and artificial nourishment in the two situations below. It cannot be acted upon until two physicians have examined you and have certified that you lack decision capacity and either:

1. have a terminal condition, **or**
2. are in a persistent vegetative state.

The document allows you to choose between 3 options for **life sustaining procedures**

1. Forgo life sustaining treatment,
2. Accept life sustaining treatment but only for a limited time, or
3. Continue life sustaining treatment as long as medically feasible.

The same options are available for **artificial nutrition and hydration**

1. Forgo artificial nutrition and hydration,
2. Accept artificial nutrition and hydration but only for a limited time, or
3. Continue artificial nutrition and hydration as long as medically feasible.

If a doctor determines that pain results from stopping artificial nutrition and hydration, then they can order that it be continued to provide comfort and relieve pain.

You may also list individuals you would like your doctor to be able to speak with about your medical condition. You can express your wishes as to organ and tissue donation. If you have designated a medical power of attorney, you can indicate whether you would like this document to prevail or if you would like your power of attorney to override this document.

Two (2) witnesses must sign your Living Will. The following individuals **cannot** witness or sign a Living Will: patients in the facility in which you are receiving care, any doctor or any employee of your doctor, any employee of the facility or agency providing your care, your creditors, persons who may inherit your money or property.

You should give a copy of your Living Will to your doctor and your family. You may cancel (revoke) or change your Living Will at any time. You can do this by destroying it. You may also sign a statement that you no longer want it, or you may prepare a new one. Be sure to tell your family, your doctor, and anyone else who may have a copy that it has been canceled or changed.

MEDICAL DURABLE POWER OF ATTORNEY

CRS §§ 15-14-503 to 15-14-509

A Medical Durable Power of Attorney is a form that can be used to designate another individual to make medical decisions for you. This person is called your "agent." In addition to standing in for you when it is time to make medical decisions with your doctor, your agent can also get copies of medical records and information needed to make medical decisions for you. You must be competent to designate a medical power of attorney.

Unlike a living will, you do not have to be terminally ill or in a vegetative state for a Medical Power of Attorney to be effective. Your Medical Durable Power of Attorney can become effective immediately or you can choose to make it become effective only when you become incapacitated and unable to make your own decisions. If you choose for the document to become effective upon incapacity, your agent will need to be able to obtain from your physician a letter certifying that you are incapacitated. You may cancel (revoke) your Medical Durable Power of Attorney at any time.

You can appoint anyone to be your health care agent as long as that person is at least 18 years old, mentally competent, and willing to be your agent. Your agent does not have to live in Colorado, although you may want to consider choosing someone who lives nearby. If you appoint your spouse as your agent, and then later you divorce, legally separate, or your marriage is annulled, your spouse is automatically removed as your agent unless you expressly state otherwise in your Medical Durable Power of Attorney.

You may include any directive, condition, or limitation of an agent's authority. Your Medical Durable Power of Attorney may also state that you do not want certain types of medical treatment. If it contains no directives, or if the principal's wishes are not known to the agent, the agent shall act in the best interests of the principal (you) as determined by the agent. If you also complete a living will, make sure that your directives are consistent so that your wishes are clear.

It is important to talk with your doctor, your family, and your agent about your medical care choices and your advance directives. It is also important to give a copy of your Medical Power of Attorney to your doctor, your family, and your agent.

MEDICAL PROXY/SURROGATE DECISION-MAKER

CRS §§ 15-18.5-103, 15-18.5-104

Who will make medical decisions if you lack capacity and don't prepare advance directives?

When an adult is incapacitated and there is no Medical Power of Attorney, Colorado law provides for a process to determine who has authority to make medical decisions on behalf of the incapacitated individual. This is called a Medical Proxy. The process is as follows:

- First, a determination of incapacity must be documented in person's medical record
- Then, the medical professional must inform the patient of lack of capacity
- Next, the medical professional must identify and inform interested persons – this includes the person's spouse, parents, adult children, siblings, grandchildren, close friends.
- The interested persons must then come up with a consensus as to who should act as medical proxy to make medical decisions on behalf of the incapacitated person
- If consensus is not reached, then parties can file a guardianship proceeding
- In some circumstances, if there is no one else available to be a proxy decision-maker, the attending physician can appoint another physician to act as a proxy decision maker.

A proxy can make decisions about all types of medical care and shall comply with your wishes (if known) regarding medical care. If your wishes are not known, the proxy is to act in your best interests. The proxy can decide to stop (or not to start) tube feeding only when 2 doctors agree that the tube feeding would only prolong dying and is unlikely to help you recover. One of the doctors must be trained in neurology or neurosurgery. The proxy decision-maker authority ends if the person regains capacity.

A surrogate decision-maker is appointed through a similar process, but the decision-maker can be an individual acting on behalf of an organization, or a community or charitable organization. They cannot be an employee, a contractor, or an official representative of, or receive any compensation of any kind from a health-care provider, medical benefit provider, pharmaceutical company, pharmacy benefit management company, pharmacy, or any person or entity engaged in the sale of insurance.

GUARDIANSHIP

CRS §15-14-303

A guardian is a person appointed by a court to assist with the personal affairs of a person who is unable to make his/her own decisions, including health care decisions. A guardianship action begins when an individual (or an agency/institution) files a petition with the court requesting that the court appoint them as guardian over another individual. The court determines whether the alleged incapacitated person lacks sufficient understanding or capacity to make or communicate responsible decisions. Guardianship is the most restrictive protection which can be provided for a person who is unable to make their own decisions and should be used as a last step. Guardianship may require a lawyer, time, money, and a formal court hearing to put into place, and to revoke.